Canada Border Services Agency | Agence des services frontaliers du Canada

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Memorandum D16-1-1

Ottawa, August 17, 2018

Information pertaining to the application, collection, and adjustment of a surtax

In Brief

Paragraph 10 has been amended to clarify the appeal provisions for the assessment of a surtax.

This memorandum provides information concerning the administration and enforcement of surtax orders under sections 53(2), 55(1), 60, 63(1), 68(1), 77.1(2), 77.6(2) or 78(1) of the Customs Tariff.

Legislation

Customs Act

Customs Tariff

Guidelines and General Information

1. A surtax is a duty imposed by Order in Council under sections 53(2), 55(1), 60, 63(1), 68(1), 77.1(2), 77.6(2) or 78(1) of the Customs Tariff. The Order in Council (surtax order) sets out the amount of the surtax, the goods to which it applies, and, sometimes, its duration. A surtax can be levied in addition to customs duties imposed under the Customs Tariff.

2. Imported goods may be subject to a surtax applied in accordance with the following special measures, emergency measures and safeguards measures:

(a) Subsection 53(2) can be used to impose a surtax in addition to customs duties on any goods to enforce Canada's rights under a trade agreement or to respond to acts of the government of a country that adversely affect trade in Canadian goods or services.

(b) Subsection 55(1) can be used to impose a surtax as an emergency measure of a temporary nature, usually on imported goods causing or threatening serious injury to Canadian producers of like or directly competitive goods. Where imports from a free trade partner are excluded from a global surtax action, section 60 provides that such imports may subsequently be included, if they surge during the course of the action.

(c) Subsection 63(1) provides for the extension of surtax order where it is necessary to prevent or remedy serious injury to Canadian producers.

(d) Subsection 68(1) can be used to impose a surtax on prescribed agricultural goods. Before such an order is made, certain conditions of the Agreement on Agriculture of the World Trade Organization must be met.

(e) Subsection 77.1(2) can be used to impose a surtax on goods originating in the People's Republic of China that are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods.

(f) Subsection 77.6(2) can be used to impose a surtax on goods originating in the People's Republic of China at any time it appears that an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

(g) Section 78(1) can be used to impose a surtax, in addition to the customs duties, on goods that originate in a specific country when Canada's financial position and its balance of payments are such as to require special measures respecting Canada's imports of goods from that country.

3. The administration of a surtax order is the responsibility of the Canada Border Services Agency (CBSA).

4. Section 17 of the Customs Act provides the CBSA the authority to assess a surtax, which is a duty within the meaning of the Customs Act.

Notification of a Surtax

5. Every surtax order made by the Governor in Council is published in the Canada Gazette.

6. The CBSA will issue a Customs Notice that will provide information about the imported goods subject to the surtax order, the information required to calculate the amount of surtax and any other relevant information.

Accounting for Goods Subject to a Surtax Order

7. The importer becomes liable to pay surtax on imported goods subject to a surtax order upon the importation of the goods.

8. Payment of surtax is made in the same way and within the same prescribed time that customs duties and taxes are paid.

9. Importers must report the surtax order code in field 32 of Form B3-3, Canada Customs Coding Form, by inserting code "51" for surtax. When a surtax amount is relieved by a remission order, code "50" should be used instead.The amount of surtax owing must be entered in field 39 of Form B3. Refer to Memorandum D17-1-10, Coding of Customs Accounting Documents, for additional information on completing Form B3. Refer to Memorandum D8-4-1, Information Pertaining to Remission Orders, for additional information on remission orders.

Reviews, Self-Adjustments, and Re-determinations

10. The imposition of a surtax is not subject to appeal under the Customs Tariff or the Customs Act. Accounting documents are normally reviewed by the CBSA to ensure that the correct amount of surtax was self-assessed by the importer. Determinations, re-determinations or further re-determinations made by the CBSA may be subject to appeal under the Customs Act.

11. The CBSA may re-determine or further re-determine the origin, tariff classification, and/or value for duty on its own initiative or in response to a self-adjustment. In so doing, as with customs duties and taxes, the CBSA may assess any undeclared amount of surtax.

12. For more information on self-adjustment and refunds refer to Memorandum D11-6-6, "Reason to Believe" and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty, Memorandum D6-2-3, Refund of Duties and Memorandum D6-2-6, Refund of Duties and Taxes on Non-commercial Importations.

13. If additional surtax is payable in a self-adjustment, importers must report the surtax order code in field 26 on the "As claimed" portion of Form B2, Canada Customs – Adjustment Request, by inserting code "51" for surtax.

14. Please refer to Memorandum D17-2-1, The Coding, Submission and Processing of Form B2 Canada Customs Adjustment Request, for additional information on completing Form B2.

15. Where there is overpayment of surtax, an importer may submit Form B2 to the appropriate CBSA office to request refund of the amount overpaid.

Amounts Owing

16. Where an amount of surtax is to be refunded to, or is payable by the importer, the CBSA will issue a Form B2-1, Canada Customs – Detailed Adjustment Statement (DAS), which serves as a notice of assessment or refund by the CBSA in response to an adjustment request, or a review or re-determination initiated by the CBSA.

Additional Information

17. Questions concerning the application, assessment, and adjustment of a surtax should be directed to:

Director, Trade Policy
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
222 Queen Street, 4th Floor
Ottawa ON K1A 0L8

18. For more information on CBSA programs, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237.**

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	
Legislative References	Customs Act, Customs Tariff
Other References	D6-2-3, D6-2-6, D8-4-1, D11-6-6, D17-1-10, D17-2-1 Form B2, Form B3-3,
Superseded Memorandum D	D16-1-1 dated June 29, 2018